Supreme Court, U. S.
FILED
MAR 22 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-1191

FRANK DE GUISEPPE,

Petitioner,

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF BELLWOOD, LLOYD HOWARD AND LOUIS A. NELSON,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STAEHLIN, JANTORNI, SULLIVAN
& GENTILI,
JOHN M. SULLIVAN,
One IBM Plaza, Suite 3215,
Chicago, Illinois 60611,
312-467-9093,
Attorneys for Respondents.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

BLEED THROUGH

INDEX.

	PAGE
Table of Authorities	i
Reports	1
Jurisdiction	2
Questions Presented	2
Argument	3
Conclusion	6

TABLE OF AUTHORITIES.

Cases.

Durley v. Mayo, 351 U. S. 277, 76 S. Ct. 806, reh. den. 352 U. S. 859, 77 S. Ct. 22 (1956)	4

U. S. Statutes.

28 U. S. C. Sec. 1257(3)	3
28 U. S. C. Rule 23(f)	4
28 U. S. C. Rule 23(h)	5

BLEED THROUGH

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-1191.

FRANK DE GUISEPPE,

Petitioner,

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF BELLWOOD, LLOYD HOWARD AND LOUIS A. NELSON,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondents, Board of Fire & Police Commissioners of the Village of Bellwood, Lloyd Howard and Louis A. Nelson, respectfully pray that the Petition of Frank DeGuiseppe for a Writ of Certiorari to the Appellate Court of Illinois, First Judicial Circuit, Fourth Division, be denied.

REPORTS.

The opinion of the Illinois Appellate Court, First District, Fourth Division is officially and unofficially reported as follows: 30 Ill. App. 3d 352, 332 N. E. 2d 405 (1975).

JURISDICTION.

Petitioner invokes jurisdiction of this Court under the Fifth and Fourteenth Amendments of the United States Constitution. It is respondents' contention that invocation of these jurisdictional grounds is erroneous. Respondents further contend that no jurisdiction of this Court exists.

QUESTIONS PRESENTED.

Respondents disagree with the questions presented by the Petitioner, and respectfully submit that the sole question presented is whether this Court has jurisdiction to review a judgment of the Illinois Appellate Court because no federal questions or issues were raised at any time in the courts below and no such federal questions or issues were passed on or determined below.

BLEED THROUGH

ARGUMENT.

THIS COURT LACKS JURISDICTION TO GRANT WRIT OF CERTIORARI.

Title 28, Section 1257 of the United States Code states in part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows: . . .
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commissions held or authority exercised under, the United States.

Petitioner seeks a Writ of Certiorari for the review of a decision rendered by the Illinois Appellate Court, leave to appeal being denied by the Illinois Supreme Court. The decision involved the interpretation of state statute namely *Ill. Rev. Stat.*, Chap. 24, Section 10-2.1-4. This statute, as part of the Illinois Municipal Code, relates to the appointment of Chief of Police by the Board of Fire and Police Commissioners and is purely local in nature.

A review of the record will make it undoubtedly clear that at no time in his arguments before the trial court, the appellate court, or in his petition for leave to appeal to the Illinois Supreme Court, did the Petitioner argue that the interpretation of the above statute, or any of the related statutes cited in his Petition, deprive Petitioner of his property right to a Sergeant's promotion thereby violating the Fifth and Fourteenth Amendments of the United States Constitution. It is therefore respect-

fully submitted that the Petitioner cannot now raise these grounds for the first time before this Court in order to invoke its jurisdiction.

The Petitioner has presented a case where there is not even a question as to whether the State Court decided the issues before it on State or Federal grounds. It is obvious that no federal grounds were presented at the State level, and the decision rendered by the Appellate Court was solely on state grounds.

> The Supreme Court will review a decision of a state court only where it affirmatively appears from record that a federal question was presented to the highest state court having jurisdiction and that its decision on the federal question was necessary to the determination of the cause . . . *Durley* v. *Mayo*, 351 U. S. 277, 76 S. Ct. 806, reh, den. 352 U. S. 859, 77 S. Ct. 22 (1956).

It must also be pointed out that certain provisions of the Rules of the Supreme Court pertaining to Petitions for Certiorari have not been complied with by Petitioner, which underscores the fact that Petitioner has not met the jurisdictional requirements of this Court.

Title 28, Rule 23(f) of the United States Code provides in part:

> If a review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (*e.g.*, by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignments of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on Writ of Certiorari.

BLEED THROUGH

Also, Title 28, Rule 23(h) of the United States Code provides that a Petition for Writ of Certiorari shall include "a direct and concise argument amplifying the reasons relied on for the allowance of the writ," said reasons being set forth in Rule 19.

Mr. DeGuiseppe's Petition is devoid of any reference to the stage of the proceedings at which the federal questions were raised in accordance with Rule 23(f). The Petition is also devoid of any amplification of reasons for granting the Writ as specified in Rule 23(h).

It is Respondents' position that the Petition lacks these requirements because no references can be made to the raising of federal questions and no reasons can be given for granting the Writ because none exist. There is clearly no proper jurisdictional basis for the Petition before this Court, and the Petition should be denied.

CONCLUSION.

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

STAEHLIN, JANTORNI, SULLIVAN
& GENTILI,
JOHN M. SULLIVAN,
One IBM Plaza, Suite 3215,
Chicago, Illinois 60611,
312-467-9093,
Attorneys for Respondents.